

**FILED**

MAY 16 2003

**Board of Vocational Nursing  
and Psychiatric Technicians**

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Attorneys for Complainant

**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2006-2197

JUDSON NEAL GARRETT  
1639 32nd Street  
San Diego, CA 92102

**A C C U S A T I O N**

Vocational Nurse License No. 181421

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational  
Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about July 1, 1997, the Board of Vocational Nursing and Psychiatric  
Technicians issued Vocational Nurse License Number 181421 to Judson Neal Garrett  
(Respondent). The Vocational Nurse License was in full force and effect at all times relevant to  
the charges brought herein and will expire on June 30, 2009, unless renewed.

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(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

....

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

9. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

....

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

11. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

12. California Code of Regulations, title 16, section 2522.5 states:

(a) When considering the suspension or revocation of a license on the ground that a licensed vocational nurse has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

1           13.     Section 125.3 of the Code provides, in pertinent part, that the Board may  
2 request the administrative law judge to direct a licensee found to have committed a violation or  
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
4 and enforcement of the case.

5                                   **FIRST CAUSE FOR DISCIPLINE**

6                           **(August 30, 2007 Criminal Conviction for DUI on May 18, 2007)**

7           14.     Respondent has subjected his license to disciplinary action under sections  
8 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is  
9 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.  
10 The circumstances are as follows:

11                   a.     On or about August 30, 2007, in a criminal proceeding entitled  
12 *People v. Judson Neal Garrett*, in San Diego County Superior Court, case number M022430,  
13 Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152,  
14 subdivision (b), driving under the influence of alcohol (0.08 or more), a misdemeanor.  
15 Respondent also admitted a conviction for violating Vehicle Codes section 23152 or 23153  
16 within seven (7) years of the commission of the instant offense.

17                   b.     As a result of the conviction, on or about August 30, 2007,  
18 Respondent was sentenced to 96 hours in the custody of the county sheriff's work release  
19 program, five years summary probation, standard alcohol conditions, and payment of fines and  
20 fees in the amount of \$2,276. Respondent was further ordered to attend and complete a MADD  
21 program.

22                   c.     The facts that led to the conviction were that on or about the early  
23 morning hours of May 18, 2007, a citizen called the San Diego Police Department dispatch  
24 center to report a vehicle stopped in the middle of a South Park intersection with its headlights  
25 on and the engine running. When officers arrived, Respondent was observed asleep in the  
26 driver's seat with his seatbelt on. The officer reached into the vehicle, turned off the engine, and  
27 took custody of the car keys. Respondent woke up. The officer noted that Respondent appeared  
28 to be disoriented and confused; he was unable to provide answers to basic questions. There was

1 a strong odor of alcohol coming from the car. The officer asked Respondent to exit the car so  
2 that he could assess Respondent's impairment. Respondent reached for a pack of gum. The  
3 officer told Respondent to leave the gum on the seat and get out of the car. Respondent reached  
4 towards the ignition. The officer yelled at Respondent to get out of the car and to stop reaching  
5 around in the vehicle. Respondent reached for the glove box. The officer grabbed Respondent's  
6 left arm and pulled him from the vehicle, and took him to the ground, pinning him. Respondent  
7 struggled with the officer. A second officer assisted in subduing Respondent and placed him in  
8 handcuffs. Respondent was assisted to his feet; he was staggering and lost his balance while  
9 walking back to the patrol car. The officer checked Respondent's eyes for horizontal gaze  
10 nystagmus (HGN) and smooth pursuit. Because Respondent failed the HGN, and because he  
11 could not give the officer intelligible answers to any of the officer's questions due to his level of  
12 impairment, the remaining field sobriety tests were not administered. The officer checked  
13 Respondent's driver's license. The status showed that Respondent was required to have an  
14 ignition interlock device installed on his vehicle, which they did not locate. Respondent was  
15 transported to police headquarters where he tested 0.17 and 0.18 on two breath tests.

#### 16 **SECOND CAUSE FOR DISCIPLINE**

##### 17 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

18 15. Respondent has subjected his license to disciplinary action under section  
19 2878.5, subdivision (b) of the Code in that on or about August 30, 2007, Respondent plead guilty  
20 and was convicted of driving under the influence of alcohol on May 18, 2007. Respondent's  
21 alcohol use was dangerous and potentially injurious to himself and the public.

#### 22 **THIRD CAUSE FOR DISCIPLINE**

##### 23 **(Unprofessional Conduct - Conviction of an Alcohol-Related Crime)**

24 16. Respondent has subjected his license to disciplinary action under section  
25 2878.5, subdivision (c) of the Code in that on or about May 18, 2007, as detailed in paragraph  
26 14, above, Respondent's blood alcohol content was measured at 0.17 and 0.18 percent, over  
27 twice the legal limit. As a result, Respondent was convicted for driving under the influence of  
28 alcohol on August 30, 2007.

**DISCIPLINARY CONSIDERATIONS**

17. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about November 20, 1995, in a prior criminal proceeding entitled *People v. Judson Neal Garrett*, in Orange County Superior Court, case number 95HM08620, Respondent was convicted on his plea of guilty for violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol. Respondent was ordered to spend 48 hours in the Orange County Jail, pay fines and fees in the amount of \$1,264, install an ignition interlock device, and have his driver's license restricted for 18 months. The circumstances that lead to the conviction were that on or about the early morning hours of September 4, 1995, Respondent was arrested by the Irvine Police Department after he nearly drove over a University of California Irvine police officer conducting a traffic stop. Respondent came within one foot of striking the officer as he drove by at a speed of 35 to 40 miles per hour. Officers followed Respondent in their patrol car and conducted a traffic stop. The officer smelled a strong odor of alcohol on Respondent's breath, his eyes were bloodshot, and his speech was slurred. Respondent was administered a series of field sobriety tests, all of which he failed. A preliminary alcohol screening (PAS) device indicated a blood alcohol content of .171.

18. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant further alleges that on or about February 28, 1991, in a prior criminal proceeding entitled *People v. Judson Neal Garrett*, in San Bernardino County Superior Court, case number TCH19157, Respondent was convicted on his plea of guilty for violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol. Respondent was ordered to serve three years probation, pay \$1,006.50 in fees and fines, attend a first offender program, and have his driver's license restricted.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
4 Technicians issue a decision:

- 5 1. Revoking or suspending Vocational Nurse License Number 181421,  
6 issued to Judson Neal Garrett;  
7 2. Ordering Judson Neal Garrett to pay the Board of Vocational Nursing and  
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
9 pursuant to Business and Professions Code section 125.3;  
10 3. Taking such other and further action as deemed necessary and proper.  
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12 DATED: May 16, 2008

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15 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
16 Executive Officer  
17 Board of Vocational Nursing and Psychiatric Technicians  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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